

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Charlotte Division)

In re:

DIABETES ENDOCRINOLOGY & METABOLISM
ASSOCIATES, PA,

Debtor.

Chapter 11

17-30204

**APPLICATION BY AAGT, LLC FOR (i) ORDER COMPELLING DEBTOR TO PAY
RENT DUE FOR MAY 2017 AND (ii) ALLOWANCE OF ADMINISTRATIVE EXPENSE
CLAIM FOR RENT DUE FOR MARCH 2017 AND APRIL 2017**

NOW COMES AAGT, LLC (“AAGT”), by and through undersigned counsel, and files this Application (the “Application”) for (i) an order compelling the debtor to immediately pay rent due for May 2017; and ii) allowance of administrative expense claim for rent due for the months of March and April, 2017. In support of the Motion, AAGT makes the following showing to the Court:

JURISDICTION AND STATUTORY PREDICATE

1. The above-captioned debtor (the “Debtor”) filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code on February 6, 2017 (the “Petition Date”). Upon information and belief, the Debtor continues to operate its business as a debtor in possession under sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.

3. The statutory predicate for this Application is 11 U.S.C. §§ 105, 365, and 503.

BACKGROUND

4. Prior to the Petition Date, Piedmont Endocrinology Medical Associates, PA (“Piedmont”) leased certain property located at 1698 Highway 160 W, Fort Mill, South Carolina

29708 (the “Property”) from AAGT pursuant to that certain Commercial Lease Agreement, dated August 18, 2012, a copy of which is attached hereto as Exhibit A (the “Lease”).

5. Upon information and belief, Piedmont’s business ceased operating in 2013, and began operating under the name of Diabetes Endocrinology & Metabolism Associates, PA.

6. Prior to the Petition Date, Piedmont defaulted under the Lease by its failure to make the monthly rental payments due for August and September 2016. After a hearing on January 30, 2017, the South Carolina Magistrate entered a Warrant of Ejectment ordering Piedmont to vacate the Property on or before February 5, 2017.

7. The Debtor filed for bankruptcy protection on February 6, 2017. The Debtor listed the Lease in its bankruptcy schedules and continued to occupy the Property after the Petition Date. However, the Debtor failed to make any monthly post-petition rental payments to AAGT.

8. On March 24, 2017, AAGT filed a Motion for Relief from the Automatic Stay to allow AAGT to proceed with its rights to evict Piedmont and/or the Debtor from the Property. AAGT and the Debtor resolved AAGT’s Motion for Relief From Stay by Consent Order entered on May 1, 2017, a copy of which is attached hereto as Exhibit B (the “Consent Order”).

9. The Consent Order provided that: i) the Debtor was required to remit payment for the May 2017 rent in the amount of \$3,465.00 to AAGT by May 25, 2017; ii) the Debtor was required to vacate the Property by May 31, 2017; and iii) the Lease was deemed rejected.

10. While the Debtor vacated the Property by May 31, 2017, the Debtor failed to remit payment for the May 2017 rent as required by the Consent Order.

11. The Debtor has also not paid any post-petition rent for the months of March 2017 and April 2017.

REQUEST FOR RELIEF

12. Notwithstanding the Consent Order's requirement that the Debtor remit the May 2017 rent payment, the Debtor has failed and refused to comply with the Court's order in paying AAGT the rent due for May 2017.

13. AAGT requests that the Court require that the Debtor to immediately remit the May 2017 payment to AAGT in the amount of \$3,465.00. Absent immediate payment of May 2017 Rent, AAGT requests that Court enter an order for show cause as to why the Debtor should not be held in contempt for its failure to comply with the Consent Order.

14. Additionally, AAGT seeks allowance and payment of an administrative claim for the unpaid post-petition rent due for the months of March 2017 and April 2017.

15. Section 365(d)(3) requires a debtor in possession to "timely perform all obligations of the debtor . . . under any expired lease of non-residential real property, until such lease is assumed or rejected, notwithstanding section 503(b)(1) of this title." 11 U.S.C. § 365(d)(3).

16. After the Petition Date, the Debtor continued to occupy and use the Property through May 2017. The Debtor failed to make any monthly post-petition rental payments for the period of time that it occupied the Property.

17. AAGT is entitled to an administrative expense claim, under section 365(d)(3) of the Bankruptcy Code, in the amount of \$6,930.00, representing the rent due for the months of March and April 2017.

WHEREFORE, AAGT respectfully requests that the Court enter an Order granting the following relief:

1. Granting the Application;

2. Requiring that the Debtor immediately make payment in the amount of \$3,465.00 to AAGT as required under the Consent Order, and absent immediate payment, that the Debtor be required to show cause as to why it should not be held in contempt of the Consent Order.

3. Allowing AAGT an administrative expense claim under sections 365(d)(3) and 503 of the Bankruptcy Code in the amount of \$6,930.00 for unpaid rent due for the months of March 2017 and April 2017.

4. Directing the Debtor to pay the allowed administrative expense claim of \$6,930.00 to AAGT.

5. Allowing such and further relief as is just and proper.

This the 25th day of August, 2017.

BRADLEY ARANT BOULT CUMMINGS LLP

/s/ Robert A. Cox, Jr.

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Counsel for AAGT, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the **APPLICATION BY AAGT, LLC FOR (i) ORDER COMPELLING DEBTOR TO PAY RENT DUE FOR MAY 2017 AND (ii) ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM FOR RENT DUE FOR MARCH 2017 AND APRIL 2017** was served via the Court's electronic case filing and/or regular mail on the following parties on August 25, 2017:

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